

ADAM LE BERTHON (SBN 145226)  
adam.leberthon@wilsonelser.com  
**WILSON, ELSE, MOSKOWITZ,**  
**EDELMAN & DICKER LLP**  
555 S. Flower Street, suite 2900  
Los Angeles, California 90071  
Telephone:(213) 443-5100  
Facsimile: (213) 443-5101

Attorneys for Defendant and Counter-Claimant  
WILSON SPORTING GOODS CO.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

Easton Baseball/Softball Inc.,

Plaintiff,

vs.

Wilson Sporting Goods Co.,

Defendant.

Wilson Sporting Goods Co.,

Counter-Claimant,

v.

Easton Baseball/Softball, Inc.,

Counter-Defendant.

Case No. 2:15-cv-9221 R(GJSx)

**WILSON SPORTING GOODS CO.'S  
ANSWER TO PLAINTIFF'S  
COMPLAINT AND COUNTERCLAIM;  
DEMAND FOR JURY TRIAL**

1 NOW COMES Wilson Sporting Goods Co. (“Wilson”), by and through its  
2 counsel of record, and for its Answer and Affirmative Defenses to the Complaint  
3 of Plaintiff Easton Baseball/Softball Inc. (“Easton”), and for its Counterclaims,  
4 avers, admits and denies as follows:

5  
6 **AS TO THE PARTIES**

7 1. Plaintiff Easton is a Delaware corporation, with its principal place of  
8 business located at 7855 Haskell Avenue, Suite 200, Van Nuys, California 91406.

9 **Answer:** Wilson admits the allegations of paragraph 1 of the Complaint.

10 2. Easton is a leading supplier of sports equipment, including baseball  
11 bats.

12 **Answer:** Wilson denies the allegations of paragraph 2 of the Complaint.

13 3. Upon information and belief, Defendant Wilson is a Delaware  
14 corporation, with its principal place of business located at 8750 W. Bryn Mawr  
15 Ave., Chicago, Illinois 60631. Wilson is registered to do business in California  
16 and has a designated registered agent in California for purposes of service of  
17 process.

18 **Answer:** Wilson admits the allegations of paragraph 3 of the Complaint.

19 4. Upon information and belief, Wilson makes, sells, offers for sale in  
20 the United States, and/or imports into the United States, sports equipment,  
21 including baseball bats.

22 **Answer:** Wilson admits the allegations of paragraph 4 of the Complaint.  
23

24 **AS TO JURISDICTION AND VENUE**

25 5. This is a civil action for patent infringement arising under the patent  
26 laws of the United States, 35 U.S.C. § 1 et seq. This Court has subject matter  
27 jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

1       **Answer:** Wilson denies the allegations of paragraph 5 of the Complaint.

2       6.       This Court has personal jurisdiction over Wilson because Wilson  
3 engages in business within this district, and has placed infringing products into the  
4 stream of commerce by shipping products into this district (and/or knowing that  
5 the products would be shipped into this judicial district), and such infringing  
6 products have been sold and used in this district.

7       **Answer:** Wilson denies the allegations of paragraph 6 of the Complaint.

8       7.       Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b),  
9 because, among other reasons, Wilson is subject to personal jurisdiction in this  
10 district and has committed acts of infringement in this district.

11       **Answer:** Wilson denies the allegations of paragraph 7 of the Complaint.

12  
13                               **AS TO COUNT I**

14                               **(Patent Infringement of U.S. Patent No. 8,480,519)**

15       8.       Easton repeats and re-alleges each and every allegation of the  
16 foregoing paragraphs as though fully set forth herein.

17       **Answer:** Wilson hereby incorporates its admissions, denials and averments  
18 contained in paragraphs 1 through 7 hereof as though fully rewritten herein.

19  
20       9.       Easton is the owner by assignment of U.S. Patent No. 8,480,519,  
21 which was duly and lawfully issued by the United States Patent and Trademark  
22 Office (“USPTO”) on July 9, 2013, titled “Ball Bat with Governed Performance”  
23 (“the ’519 patent”). A true and correct copy of the ’519 patent is attached as  
24 Exhibit A and made a part hereof.

25       **Answer:** Wilson admits that the United States Patent Office issued U.S.  
26 Patent No. 8,480,519. Regarding the remaining allegations of paragraph 9, Wilson  
27  
28

1 lacks knowledge or information sufficient to form a belief about the truth of an  
2 allegation; therefore, Wilson denies the remaining allegations of paragraph 9.

3  
4 10. Wilson has had knowledge of the '519 patent since at least as early as  
5 August 19, 2013. For example, the '519 patent was listed on Information  
6 Disclosure Statements submitted by Wilson to the USPTO on August 19, 2013  
7 during the prosecution of U.S. Patent Application Ser. No. 13/938,785 and Ser.  
8 No. 13/938,830.

9 **Answer:** Wilson denies that it had specific knowledge of the scope of the  
10 '519 Patent since at least as early as August 19, 2013. Wilson admits that the '519  
11 Patent was listed on an Information Disclosure Statement along with 89 other  
12 references pertaining to baseball bats.

13  
14 11. Wilson has at no time been licensed under the '519 patent.

15 **Answer:** Wilson lacks knowledge or information sufficient to form a belief  
16 about the truth of an allegation; therefore, Wilson denies the allegations of  
17 paragraph 11.

18  
19 12. Wilson has infringed, and is currently infringing, literally and/or  
20 under the doctrine of equivalents, one or more claims of the '519 patent, in  
21 violation of 35 U.S.C. § 271 et seq., by making, using, selling, offering to sell in  
22 the United States, and/or importing into the United States products that embody  
23 one or more claims of the '519 patent, including without limitation Vexxum  
24 model baseball bats including stiffening elements, as well as any other  
25 substantially similar baseball bats.

26 **Answer:** Wilson denies the allegations of paragraph 12 of the Complaint.  
27  
28



1           17.   Regarding the '108 patent, Easton has complied with the statutory  
2 notice provisions of 35 U.S.C. § 287.

3           **Answer:** Wilson lacks knowledge or information sufficient to form a belief  
4 about the truth of an allegation; therefore, Wilson denies the allegations of  
5 paragraph 17.

6  
7           18.   Wilson has had knowledge of the '108 patent at least as early as the  
8 date of the service of this Complaint.

9           **Answer:** Wilson denies the allegations of paragraph 18 of the Complaint.  
10

11           19.   Wilson has at no time been licensed under the '108 patent.

12           **Answer:** Wilson lacks knowledge or information sufficient to form a belief  
13 about the truth of an allegation; therefore, Wilson denies the allegations of  
14 paragraph 19.

15  
16           20.   Wilson has infringed, and is currently infringing, literally and/or  
17 under the doctrine of equivalents, one or more claims of the '108 patent, in  
18 violation of 35 U.S.C. § 271 et seq., by making, using, selling, offering to sell in  
19 the United States, and/or importing into the United States products that embody  
20 one or more claims of the '108 patent, including without limitation baseball bats  
21 in the CF6, CF7 and CF8 BBCOR and Voodoo BBCOR model lines, as well as  
22 any other substantially similar baseball bats.

23           **Answer:** Wilson denies the allegations of paragraph 20 of the Complaint.  
24

25           21.   Wilson's infringement of the '108 patent is willful.

26           **Answer:** Wilson denies the allegations of paragraph 21 of the Complaint.  
27  
28

1           22. Wilson has been injured and damaged by Wilson's infringement of  
2 the '108 patent. Wilson's infringement has caused, and will continue to cause,  
3 irreparable harm to Easton, for which Easton has no adequate remedies at law,  
4 unless and until enjoined by this Court.

5           **Answer:** Wilson denies the allegations of paragraph 22 of the Complaint.

6  
7                           **AS TO EASTON'S PRAYER FOR RELIEF**

8           Wilson denies that Easton is entitled to any of the relief prayed for in its  
9 Prayer for Relief.

10  
11                           **AFFIRMATIVE DEFENSES**

12           Without admitting any of the allegations of the Complaint other than those  
13 specifically admitted herein, and without prejudice to Wilson's right to plead  
14 additional affirmative defenses or counterclaims as the facts of the matter develop  
15 and warrant, Wilson asserts the following affirmative defenses:

16  
17                           **First Affirmative Defense**

18           The Complaint fails to state a claim upon which relief can be granted.

19  
20                           **Second Affirmative Defense**

21           The Complaint fails to state a claim for increased damages pursuant to 35  
22 U.S.C. § 284.

23  
24                           **Third Affirmative Defense**

25           Wilson does not infringe and has not infringed, induced others to infringe,  
26 or contributed to infringement by others of any valid claim of the Asserted  
27 Patents.

1 **Fourth Affirmative Defense**

2 The Asserted Patents are invalid for failure to comply with one or more  
3 provisions of the U.S. Patent laws, including 35 U.S.C. §§ 101, 102, 103, 112,  
4 115, and/or 116.

5  
6 **Fifth Affirmative Defense**

7 The Complaint is barred in whole or in part by doctrines of laches and/or  
8 waiver and/or estoppel.

9  
10 **Sixth Affirmative Defense**

11 The Complaint is barred by acquiescence.

12  
13 **Seventh Affirmative Defense**

14 The Complaint is barred by unclean hands.

15  
16 **Eighth Affirmative Defense**

17 Plaintiff's infringement claims are barred, in whole or in part, by the  
18 doctrine of prosecution history estoppel.

19 **Ninth Affirmative Defense**

20 Plaintiff's infringement claims are barred, in whole or in part, by the  
21 operation of applicable statutes, including 35 U.S.C. §286 (time limitation on  
22 damages), and 35 U.S.C. §287 (past failure to mark the asserted patent on  
23 substantially all of Plaintiff's products which were covered by the Asserted  
24 Patents).

25 **Tenth Affirmative Defense**

26 Plaintiff is not entitled to injunctive relief because any injury to plaintiff is  
27 not immediate or irreparable, and plaintiff has an adequate remedy (if any) at law.







1           15.    The Court should issue a declaration that Wilson does not infringe,  
2 directly or indirectly, literally or pursuant to the doctrine of equivalents, or  
3 otherwise, any claim of the '108 Patent, so that Wilson may ascertain its rights  
4 relevant to the '108 Patent.

#### 5                                   **COUNTERCLAIM NO. 4**

#### 6                                   **(INVALIDITY OF THE '108 PATENT)**

7           16.    Wilson realleges and incorporates by reference counterclaim  
8 paragraphs 1 through 15 above, as though fully set forth herein.

9           17.    The claims of the '108 Patent are invalid for failure to meet the  
10 conditions of patentability, or otherwise to comply with the requirements set forth  
11 in 35 U.S.C. §§ 102 and/or 103 based on, among other things, prior art and prior  
12 art that was not before the United States Patent and Trademark Office during  
13 prosecution of the application that issued the '135 Patent, as well as for failure to  
14 meet the conditions of patentability set forth in 35 U.S.C. § 112.

15           18.    The Court should issue a declaration that the claims of the '108  
16 Patent are invalid so that Wilson may ascertain its rights relevant to the '108  
17 Patent.

#### 18                                   **WILSON'S PRAYER FOR RELIEF**

19           WHEREFORE, Wilson respectfully prays that the Court grant the following  
20 relief:

21           A.    Entry of judgment in Wilson's favor on each and every count of  
22 Wilson's Complaint and Wilson's Counterclaims;

23           B.    Entry of an Order directing that Wilson is not liable to Wilson for any  
24 damages pursuant to Wilson's Complaint;

25           C.    Entry of a judicial declaration that Wilson has not infringed and is not  
26 infringing, either directly or indirectly, literally or pursuant to the doctrine of  
27 equivalents, or otherwise, any claim of U.S. Patent No. 8,480,519;

1 D. Entry of a judicial declaration that the claims of U.S. Patent No.  
2 8,480,519 are invalid;

3 E. Entry of a judicial declaration that Wilson has not infringed and is not  
4 infringing, either directly or indirectly, literally or pursuant to the doctrine of  
5 equivalents, or otherwise, any claim of U.S. Patent No. 8,795,108;

6 F. Entry of a judicial declaration that the claims of U.S. Patent No.  
7 8,795,108 are invalid; and

8 G. Such other and further relief that the Court deems just and  
9 appropriate.

10 DATED: January 27, 2016

11 **WILSON, ELSER, MOSKOWITZ,**  
12 **EDELMAN & DICKER LLP**

13  
14 By: /s/ Adam Le Berthon  
15 ADAM LE BERTHON (SBN 145226)  
16 adam.leberthon@wilsonelser.com  
17 555 S. Flower Street, suite 2900  
18 Los Angeles, California 90071  
19 Telephone:(213) 443-5100  
20 Facsimile: (213) 443-5101

21  
22 Attorneys for Defendant  
23 WILSON SPORTING GOODS CO.  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38-1 of the Local Rules of the United States District Court for the Central District of California, Defendant and Counter-Claimant Wilson Sporting Goods Co. hereby demands a trial by jury of all claims and issues which may be tried to a jury.

Dated: January 27, 2016

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

By: /s/ Adam Le Berthon

ADAM LE BERTHON (SBN 145226)

adam.leberthon@wilsonelser.com

555 S. Flower Street, suite 2900

Los Angeles, California 90071

Telephone:(213) 443-5100

Facsimile: (213) 443-5101